

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ORRIN EUGENE HERNANDEZ,

Defendant.

CR 11-03-GF-BMM

ORDER

This case was referred to United States Magistrate Judge John Johnston for a revocation hearing and findings and recommendations. Judge Johnston entered his findings and recommendations on November 30, 2015. Defendant admitted he had violated Standard Condition 7 of his supervised release by using marijuana and methamphetamine, and he had violated Special Condition 4 of his supervised release by consuming alcohol. Judge Johnston found the admissions sufficient to establish the supervised release violations. He recommended that this Court revoke Defendant's supervised release and impose a term of custody of time served, with 35 months of supervised release to follow.

No objections were filed by either party. Judge Johnston's findings and recommendations are therefore reviewed for clear error. *McDonnell Douglas Corp. Commodore Bus. Mach, Inc.*, 656 F.2d 1309, 1319 (9th Cir.

1981).

This Court agrees with Judge Johnston's findings. Defendant admitted he had violated Standard Condition 7 and Special Condition 4. Defendant could be incarcerated for up to 24 months, followed by 36 months of supervised release less any custody time imposed. The United States Sentencing Guidelines call for a term of imprisonment of four to ten months. A custodial sentence of time served, followed by 20 months of supervised release is appropriate. Defendant is employed and takes care of his five children. A downward departure from the guideline range is warranted by Defendant's honesty with his probation officer, his employment history, and his family circumstances. Defendant's supervision began on January 17, 2014. Defendant had been doing well on supervision until August 2015. The sentence is sufficient but not greater than necessary.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 68) are ADOPTED in full and Judgment shall be entered accordingly.

DATED this 15th day of December, 2015.



Brian Morris
United States District Court Judge